



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R08-OAR-2019-0063; FRL-9994-54-Region 8]**

#### **Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Nonattainment Permitting Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the state of Utah on March 27, 2014, and August 7, 2018. The submittals revise the portions of the Utah Administrative Code (UAC) that pertain to the issuance of Utah air quality permits for major sources in nonattainment areas. The intended effect of this proposed action is to bring Utah's nonattainment new source review (NNSR) permitting program in line with federal requirements. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

**DATES:** Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2019-0063, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Quality Planning Branch, EPA, Region 8, Mailcode 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6227, [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

### *NNSR Programs Generally*

CAA section 110(a)(2)(C) requires each SIP to include “a program to provide for regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter,” and CAA section 172(c)(5) provides that the SIP “shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173].” CAA section 173 lays out the requirements for obtaining a permit that must be included in a state’s SIP-approved permit program.

Section 51.165 in title 40 of the CFR (Permit Requirements) sets out the minimum plan requirements for the NNSR permitting program. Generally, 40 CFR 51.165 consists of a set of definitions, minimum plan requirements regarding procedures for determining applicability of NNSR and use of offsets, and minimum plan requirements regarding other source obligations, such as recordkeeping.

Specifically, subparagraphs 51.165(a)(1)(i) through (xlv) enumerate a set of definitions which states must either use or replace with definitions that a state demonstrates are more stringent or at least as stringent in all respects. Subparagraph 51.165(a)(2) sets minimum plan requirements for procedures to determine the applicability of the NNSR program to new and modified sources. Subparagraph 51.165(a)(3), (a)(9) and (a)(11) set minimum plan requirements

for the use of offsets by sources subject to NNSR requirements. Subparagraphs (a)(8) and (a)(10) regard precursors, and subparagraphs (a)(6) and (a)(7) regard recordkeeping obligations. Subparagraph 51.165(a)(4) allows NNSR programs to treat fugitive emissions in certain ways. Subparagraph 51.165(a)(5) regards enforceable procedures that apply after approval to construct has been granted. Subparagraph 51.165(b) sets minimum plan requirements for new major stationary sources and major modifications in attainment and unclassifiable areas that would cause or contribute to violations of the national ambient air quality standards (NAAQS.) Finally, subparagraph 51.165(f) sets minimum plan requirements for the use of Plant-wide Applicability Limits.

On May 16, 2008, the EPA finalized regulations to implement the prevention of significant deterioration (PSD) and NNSR permitting programs for fine particulate matter (PM<sub>2.5</sub>). 73 FR 28321. Among other things, the 2008 PM<sub>2.5</sub> NSR implementation rule created presumptions for NNSR permitting of PM<sub>2.5</sub> precursors in PM<sub>2.5</sub> nonattainment areas: nitrogen oxides (NO<sub>x</sub>) were presumed to be a precursor that had to be addressed in the permitting program, while volatile organic compounds (VOC) and ammonia were presumed to not be precursors. Sulfur dioxide (SO<sub>2</sub>) was a required precursor in all cases.

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), issued a decision that remanded the 2008 PM<sub>2.5</sub> NSR Implementation Rule. The court found that the EPA erred in implementing the PM<sub>2.5</sub> NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. In

particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM<sub>10</sub> precursors (and hence under the court decision, PM<sub>2.5</sub> precursors) “except where the Administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area.” Accordingly, nonattainment NSR programs that are submitted for PM<sub>2.5</sub> nonattainment areas must regulate all PM<sub>2.5</sub> precursors, i.e., SO<sub>2</sub>, NO<sub>x</sub>, VOC, and ammonia, unless the Administrator determines that such sources of a particular precursor do not contribute significantly to nonattainment in the nonattainment area.

The EPA finalized a new provision at 40 CFR 51.165(a)(13) that codifies this requirement, as it applies to PM<sub>2.5</sub>, in the federal regulations. The PM<sub>2.5</sub> SIP Requirements Rule, 81 FR 58010 (Aug. 24, 2016), describes three optional approaches for demonstrating that a particular precursor is not a significant contributor to ambient PM<sub>2.5</sub> levels that exceed the standard in a particular nonattainment area. These three precursor demonstrations are: a) comprehensive precursor demonstration; b) major stationary source precursor demonstration; and c) NNSR precursor demonstration. If a state chooses to submit a precursor demonstration, it must do so in accordance with provisions in the final rule. A state may use this type of demonstration to justify that sources of the given precursor may be excluded from certain PM<sub>2.5</sub> attainment plan requirements and/or NNSR requirements, although the particular sources and requirements eligible for exclusion will depend on the type of demonstration submitted. Section III.C of the preamble to the PM<sub>2.5</sub> implementation rule also outlines certain technical issues, such as the appropriate geographic scope of a precursor demonstration, recommended significance thresholds, and recommended analytical approaches for evaluating precursor contributions to ambient PM<sub>2.5</sub> levels and the sensitivity of PM<sub>2.5</sub> levels in an area to decreases or increases of

emissions. Subsequently, on November 16, 2016, the EPA issued a draft guidance memorandum for PM<sub>2.5</sub> precursor demonstrations.<sup>1</sup>

### *Utah's NNSR Program*

On May 10, 2001, the EPA sent Utah a letter outlining concerns with Utah's nonattainment permitting rules, which are codified in UAC R307-403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas).<sup>2</sup> On August 20, 2013, with supporting administrative documentation submitted on September 12, 2013, Utah submitted revisions to their nonattainment permitting regulations, specifically to address the EPA-identified concerns regarding their nonattainment permitting regulations. These revisions addressed R307-403-1 (Purpose and Definitions), R307-403-2 (Applicability), R307-403-11 (Actual Plant-wide Applicability Limits (PALs)), and R307-420 (Ozone Offset Requirements in Davis and Salt Lake Counties). The August 20, 2013 submittal also added VOC as a PM<sub>2.5</sub> precursor to the NNSR program; however, the submittal did not establish a significant emissions rate (SER) for VOC to determine when a modification at an existing major source would be a major modification subject to NNSR review. On March 27, 2014, Utah submitted a revision to address the omission and establish the VOC SER.

As a result of the 2013 *NRDC v. EPA* decision and the 2016 PM<sub>2.5</sub> SIP Requirements Rule, including the new provision at 40 CFR 51.165(a)(13), as well as our review of the August 20, 2013 submittal, it became clear that Utah needed to submit further revisions to address remaining deficiencies in the nonattainment permitting program in order for the EPA to fully

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<sup>1</sup> Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, "Draft PM<sub>2.5</sub> Precursor Demonstration Guidance" (Nov. 17, 2016). This memorandum is available in the docket for this rulemaking.

<sup>2</sup> This letter is available in the docket for this rulemaking.

approve the August 20, 2013 submittal. Among those deficiencies was the lack of an analysis demonstrating that sources of ammonia, as a PM<sub>2.5</sub> precursor, do not contribute significantly to PM<sub>2.5</sub> levels that exceed the NAAQS in nonattainment areas in the State. On September 30, 2016 Utah submitted to EPA a letter committing to address the remaining deficiencies in the State's nonattainment permitting program in R307-403 that were not addressed in the August 20, 2013 submittal, including revisions to R307-403-2, R307-403-3, and R307-403-4. Specifically, Utah committed:

1. To either regulate ammonia as a PM<sub>2.5</sub> precursor in the NNSR program or demonstrate that sources of ammonia do not contribute significantly to PM<sub>2.5</sub> levels that exceed the NAAQS in nonattainment areas in the state, consistent with new provisions at 40 CFR 51.1006(a)(3);
2. To revise R307-403-3, including R307-403-3(3), to remove the reference to NNSR determinations being made "at the time of the source's proposed start-up date";
3. To revise R307-403-3, including R307-403-3(2) and R307-403-3(3), to specify that NNSR permit requirements are applicable to all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment;
4. To revise R307-403-3, in addition to the previously adopted definition of lowest achievable emission rate (LAER) in R307-403-1, to explicitly state that it applies to all major new sources and major modifications for the relevant pollutants in nonattainment areas;
5. To revise R307-403-4 to incorporate the requirements from 40 CFR 51.165 that

establish that all general offset permitting requirements apply for all offsets regardless of the pollutant at issue, and to revise the provision to impose immediate and direct general offset permitting requirements on all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment;

6. To revise R307-403-4 to reference the criteria discussed in section IV.D. of 40 CFR 51, Appendix S; and
7. To update R307-403 to include a new section that imposes requirements that address emission offsets for PM<sub>2.5</sub> nonattainment areas (as required in 40 CFR 51.165(a)(11)) on NNSR sources in Utah. Utah will revise R307-403-3, including R307-403-3(3)(c), to cross reference this new section, as well as the requirements in R307-403-4, R307-403-5, and R307-403-6; and Utah commits to work with the Utah Air Quality Board to revise this section to include the requirements of CAA Section 173(c)(1) and 40 CFR 51.165 (specifically 40 CFR 51.165(a)(3)) concerning the requirement that creditable reductions be calculated based on actual emissions for offset purposes.

Under section 110(k)(4) of the Act, the EPA may approve a SIP revision based on a commitment by the state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. Based on the September 30, 2016 commitment letter, on February 3, 2017 (82 FR 918), the EPA conditionally approved Utah's August 20, 2013 submittal. For details of our analysis of the deficiencies and Utah's commitment letter, please see the October 31, 2016 notice for our proposed conditional



approval. 81 FR 75361.

## **II. Proposed Action**

### March 27, 2014 Submittal

The EPA is proposing to fully approve Utah's revisions submitted on March 27, 2014. Utah submitted a revision to their definition of "significant" in R307-403-1(4)(b), which established a SER for VOC at 40 tons per year (tpy) in PM<sub>2.5</sub> nonattainment areas. This SER is used to determine whether a modification at a major source is to be considered major. This revision is consistent with the federal definition of "significant" in 40 CFR 51.165(a)(1)(x) and we therefore propose to approve it.

### August 7, 2018 Submittal

The EPA is proposing to fully approve Utah's revisions submitted on August 7, 2018. The EPA proposes that these changes are consistent with the CAA and EPA regulations for NNSR programs in 40 CFR 51.165. Please refer to a cross-walk table in the docket for this action which outlines how Utah's nonattainment permitting rules correlate with the requirements of 40 CFR 51.165.

Specifically, the August 7, 2018 submittal revises R307-101-2 (Definitions); R307-403-1 (Purpose and Definitions); R307-403-2 (Applicability); R307-403-3 (Review of Major Sources of Air Quality Impact); R307-403-4 (Offsets: General Requirements); R307-403-5 (Offsets: Particulate Matter Nonattainment Areas); R307-403-7 (Offsets: Baseline) and R307-403-9 (Construction in Stages). The submittal also provides a technical demonstration for exempting ammonia as a PM<sub>2.5</sub> precursor in the Logan, UT-ID PM<sub>2.5</sub> nonattainment area and a technical basis for setting an ammonia SER of 70 tpy in the Salt Lake City and Provo PM<sub>2.5</sub> nonattainment

areas. If the EPA finalizes a full approval of Utah's August 7, 2018 submittal, the conditional nature of the August 20, 2013 submittal would, at that time, become fully approved.

Specifically, we are proposing to approve:

*R307-101-2 (Definitions) and Logan Precursor Demonstration*

The August 7, 2018 submittal revised the definition of "PM<sub>2.5</sub> precursor" in R307-101-2. Previously the definition stated that SO<sub>2</sub>, NO<sub>x</sub>, and VOCs were PM<sub>2.5</sub> precursors. The revised definition states that SO<sub>2</sub>, NO<sub>x</sub>, VOCs, and ammonia are precursors in all PM<sub>2.5</sub> nonattainment areas except where a demonstration satisfying 40 CFR 51.1006(a)(3) (i.e. a NNSR precursor demonstration) has, for a particular area, determined otherwise. We note that 51.1006(a)(3)(ii) requires EPA approval before the exemption applies. The revision also specifically exempts ammonia as a PM<sub>2.5</sub> precursor for NNSR purposes in the Logan, UT-ID nonattainment area.

In accordance with 40 CFR 51.1006(a)(3), the state submitted a technical demonstration that included photochemical model simulations to evaluate the sensitivity of PM<sub>2.5</sub> to increases in ammonia emissions in the Logan nonattainment area. Specifically, Utah performed model sensitivity simulations to evaluate the effect of increases in ammonia emissions of 115 tpy from each of two hypothetical new or modified point sources.<sup>3</sup> The two hypothetical ammonia point source emissions were set equal to the largest existing point source of ammonia in the Cache Valley and were located 15 km north and 10 km south of the Logan federal reference monitor site. Model simulations were performed using both a ground level release and elevated stack (254 m above ground level) release of the ammonia emissions. The added ammonia emissions had no effect on the modeled concentrations PM<sub>2.5</sub> concentrations in the Cache Valley. This

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<sup>3</sup> Logan Moderate PM<sub>2.5</sub> SIP NNSR Demonstration,

finding is consistent with the ambient monitoring data that showed large, excess ambient ammonia concentrations in the Cache Valley during PM<sub>2.5</sub> episodes. The excess gas ammonia indicates that ammonia nitrate formation in the Cache Basin is limited by the availability of nitric acid and would be relatively insensitive to changes in ammonia emissions. The high concentrations of ammonia are associated with intensive livestock operations within the Cache Basin. Under these conditions, formation for ammonium nitrate is limited by the availability of nitric acid and is insensitive to increases in ammonia emissions.

Based on the addition of all four precursors to the NNSR program, except for ammonia in the Logan nonattainment area, and our review of the submitted technical demonstration for the Logan nonattainment area, we propose to approve the revisions to R307-101-2.

*R307-403-1 (Purpose and Definitions)*

Utah also performed model simulations to evaluate sensitivity of ammonium nitrate to changes in ammonia emissions in the Provo and Salt Lake nonattainment areas. In these basins, Utah found that ammonia nitrate was sensitive to 50% reductions in total emissions. This finding is consistent with ambient monitoring data which indicates that ammonia nitrate formation can sometimes be ammonia limited during intense inversion episodes, especially in the Salt Lake nonattainment area.<sup>4</sup> Thus, Utah concluded that PM<sub>2.5</sub> formation is sensitive to changes in ammonia emissions.<sup>5</sup> Accordingly, the revisions to R307-403-1 specify that ammonia remains a

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<sup>4</sup> A comparison of AMoN measurements with localized, arrayed passive NH<sub>3</sub> samplers in Northern Utah, presentation by Dr. Randall Martin and Dr. Munkh Baasandorj, available at: [http://nadp.slh.wisc.edu/conf/2016/pptpdf/111\\_martin.pdf](http://nadp.slh.wisc.edu/conf/2016/pptpdf/111_martin.pdf).

<sup>5</sup> We note that Utah did not submit modeling specifically showing that PM<sub>2.5</sub> formation is sensitive to ammonia increases. However, the PM<sub>2.5</sub> SIP Requirements Rule does not require a state to analyze precursor increases when the state is regulating the precursor in the NNSR program; analysis of precursor increases is only required when a state wants to exempt the precursor.

PM<sub>2.5</sub> precursor in the Provo and Salt Lake nonattainment areas, and also specifies what emission rates are considered “significant” for ammonia as a precursor to PM<sub>2.5</sub>. The revisions to R307-401-1 also add text clarifying the EPA’s role in approving demonstrations satisfying 40 CFR part 51.1006(a)(3).

As discussed above, the 2016 PM<sub>2.5</sub> SIP Requirements Rule provides for optional precursor demonstrations to exempt sources of the precursor from NNSR. In the absence of a demonstration the precursor (SO<sub>2</sub>, NO<sub>x</sub>, VOC, or ammonia) must be regulated in the NNSR program. This includes establishing a SER for each precursor in order to determine whether a modification at an existing major stationary source is a major modification and therefore subject to NNSR. Our regulations for NNSR contain SERs for SO<sub>2</sub>, NO<sub>x</sub>, and VOC; however, the EPA explained that the definition of “significant” in 40 CFR 165(a)(1)(x) does not contain a SER for ammonia as a precursor to PM<sub>2.5</sub> in PM<sub>2.5</sub> nonattainment areas and stated that a national rulemaking to develop a SER for ammonia was neither warranted or effective. In the PM<sub>2.5</sub> SIP Requirements Rule, the EPA finalized a provision that requires states that must regulate modified major stationary sources of ammonia to develop and submit a definition of “significant,” such as an appropriate SER, for ammonia to be included in the state’s SIP (see 40 CFR 51.165(a)(1)(x)(F)). The EPA recommended that states consult with the appropriate EPA Regional Office to develop an ammonia SER as a means of defining “significant” for a particular nonattainment area. In the PM<sub>2.5</sub> SIP Requirements Rule, 81 FR 51844/3, the EPA stated that the ammonia SER in a Moderate nonattainment area should be no greater than 100 tpy, and no greater than 70 tpy in a Serious PM<sub>2.5</sub> nonattainment area. The rulemaking also stated that states which regulate ammonia as a PM<sub>2.5</sub> precursor should submit to the EPA a technical justification

for their ammonia SER for a nonattainment area that the state includes as part of their nonattainment permitting SIP rules.

The EPA Region 8 has worked closely with Utah in developing Utah's technical justification for the ammonia SER. Utah performed additional model simulations using the CAMx model to evaluate the sensitivity of PM<sub>2.5</sub> to increases in ammonia emissions for major source modifications within the Provo and Salt Lake nonattainment areas.<sup>6</sup> As described above and in more detail in the TSD, the CAMx model was evaluated for a January 2011 multi-day PM<sub>2.5</sub> episode, and model sensitivity to ammonia was also evaluated for this episode. Utah added three fictitious ammonia point sources to the Salt Lake nonattainment area, each with increased ammonia emissions of 70 tpy, for a cumulative increase of 210 tpy in ammonia emissions. Utah evaluated the model response over the entire nonattainment area and found that the model grid cell with the largest increase in PM<sub>2.5</sub> was 1.13 micrograms per cubic meter (ug/m<sup>3</sup>). This is less than the 1.3 ug/m<sup>3</sup> significance threshold recommended in the EPA PM<sub>2.5</sub> precursor guidance. Utah performed similar modeling in the Provo nonattainment area with 70 tpy increased emissions for two fictitious point sources, located close to existing major point sources, for a cumulative increase of 140 tpy, and found that the model increases in PM<sub>2.5</sub> were below the 1.3 ug/m<sup>3</sup> significance threshold. Thus, Utah concluded that the 70 tpy SER threshold was appropriate for both the Salt Lake and Provo nonattainment areas. The EPA finds that the Utah ammonia sensitivity modeling was performed consistent with EPA modeling guidance, and that the model sensitivity to increases in point sources of ammonia supports the 70 tpy SER

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<sup>6</sup> "Establishing an Ammonia Threshold for Major Source Modification," Utah Division of Air Quality, June 21, 2018, available in the docket.

threshold. We therefore propose to approve the 70 tpy SER and other revisions to R307-403-1.

*R307-403-2 (Applicability)*

Utah corrected and clarified text to ensure a more comprehensive application of federal nonattainment permitting requirements. Utah committed to revise R307-403-3, including R307-403-3(2) and R307-403-3(3), to specify that NNSR permit requirements are applicable to all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment. This was addressed in revisions to R307-403-2(10.)

*R307-403-3 (Review of Major Sources of Air Quality Impact)*

As discussed above, Utah committed to: 1) Revise R307-403-3(3) to remove the reference to NNSR determinations being made “at the time of the source’s proposed start-up date”; 2) Revise R307-403-3, including R307-403-3(2) and R307-403-3(3), to specify that NNSR permit requirements are applicable to all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment; and 3) Revise R307-403-3, in addition to the previously adopted definition of lowest achievable emission rate (LAER) in R307-403-1, to explicitly state that LAER applies to all major new sources and major modifications for the relevant pollutants in nonattainment areas.

Utah’s revisions to R307-403-3 submitted on August 7, 2018 satisfy all of these commitments. In addition, Utah also updated the significance level thresholds table, adding particulate matter and nitrogen oxide limits, which meet the requirements in 40 CFR 51.165(a)(13)(b).

#### *R307-403-4 (General Offset Requirements)*

Utah committed to revise R307-403-4 to incorporate the requirements from 40 CFR 51.165 to establish that all general offset permitting requirements apply for all offsets regardless of the pollutant at issue, and to revise the provision to impose immediate and direct general offset permitting requirements on all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment. Utah's revisions to R307-403-3 submitted on August 7, 2018, satisfy this commitment. Utah also committed to add a section to their nonattainment rules which address emission offset requirements for PM<sub>2.5</sub> nonattainment areas, as required in 40 CFR 51.165(a)(11.) This new section was added to R307-403-5.

#### *R307-403-5 (Offsets: Particulate Matter Nonattainment Areas)*

Previously, this section addressed emission offsets for PM<sub>10</sub> nonattainment areas. The August 7, 2018 revision(?) adds a new section to R307-403-5 to address emission offset requirements for PM<sub>2.5</sub> nonattainment areas. In addition, the text was amended and slightly reorganized to clarify the distinction between the PM<sub>10</sub> and PM<sub>2.5</sub> offset requirements.

The new PM<sub>2.5</sub> section (R307-403-5(2)) addresses the new PM<sub>2.5</sub> requirements set out in the PM<sub>2.5</sub> SIP Requirements Rule as they apply to offsets. First, the section reiterates the major stationary source threshold at 100 tpy and 70 tpy of PM<sub>2.5</sub> or a PM<sub>2.5</sub> precursor (as specified by the provisions above; i.e., SO<sub>2</sub>, NO<sub>x</sub>, and VOC in the Logan, UT-ID area and SO<sub>2</sub>, NO<sub>x</sub>, VOC, and ammonia in the Salt Lake and Provo areas), respectively, for Moderate and Serious PM<sub>2.5</sub> nonattainment areas. Second, it reiterates the SERs discussed above for PM<sub>2.5</sub> (i.e., 10 tpy direct PM<sub>2.5</sub>, 40 tpy SO<sub>2</sub>, 40 tpy NO<sub>x</sub>, 40 tpy VOC, and, in the Salt Lake and Provo nonattainment

areas, 70 tpy ammonia). This section then requires new major stationary sources and major modifications to obtain offsets at a ratio of 1:1 (or at a more stringent ozone or PM<sub>10</sub> offset ratio if one applies) and does not allow interpollutant trading. We propose to approve the revisions to R307-403-5 as consistent with the requirements for applicability and offsets found in 40 CFR 51.165.

*R307-403-7 (Offsets: Baseline)*

Utah's submittal clarifies the requirement that credit for reductions for offset purposes (in accordance with CAA Section 173(c)(1) and 40 CFR 51.165(a)(3)) should be calculated based on actual emissions. The revisions to R307-403-7 adds the sentence: "The offset baseline shall be the actual emissions, as defined in R307-401-2, of the source from which credits are obtained." This sentence is essentially identical to the last sentence in 40 CFR 51.165(a)(3), except it refers to a separate definition of "actual emissions." This separate definition of "actual emissions" in R307-401-2 is identical to that in 40 CFR 51.165. We therefore propose to approve this revision.

*R307-403-9 (Construction in Stages)*

The previous version of R307-403-9 provided that for a source constructed in stages, each of which have a potential to emit (PTE) below 100 tpy, the allowable emissions for each stage would be added together to determine NNSR applicability. Utah revised this section to replace 100 tpy with "the significance level for determining a major source" to reflect that the reclassification to Serious for two areas has changed the relevant thresholds. We propose to approve this change.

### **III. Consideration of Section 110(l) of the CAA**



Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (RFP) toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and public hearing.

The Utah SIP revisions that the EPA is proposing to approve do not interfere with any applicable requirements of the Act. The revisions to R307-101-2 and R307-403 submitted by the Utah on March 27, 2014, and August 7, 2018, do not relax any existing requirements and are intended to meet applicable requirements of the Act. Therefore, CAA section 110(l) requirements are satisfied.

#### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Utah rules promulgated in the DAR, R307-400 Series as discussed in section III of this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 30, 2019.

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Debra Thomas,  
Acting Regional Administrator,  
EPA Region 8.

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